

**COMPLAINT INVESTIGATION SUMMARY**

COMPLAINT NUMBER: 2131.04  
COMPLAINT INVESTIGATOR: Sally Cook  
DATE OF COMPLAINT: May 18, 2004  
DATE OF REPORT: June 17, 2004  
REQUEST FOR RECONSIDERATION: no  
DATE OF CLOSURE: July 12, 2004

**COMPLAINT ISSUES:**

Whether the Anderson Community School Corporation violated:

511 IAC 7-27-7(a) by failing to implement the student's individualized education program (IEP) as written, specifically, by failing to implement the student's behavioral intervention plan in connection with incident(s) that occurred on or about May 11, 2004.

511 IAC 7-25-7 by failing to conduct additional evaluation(s) requested by the parent.\*

511 IAC 7-25-5 by failing to respond to the parent's request for an independent educational evaluation.

511 IAC 7-27-7(a) by failing to implement the student's individualized education program (IEP) as written, specifically, by failing to provide assistive technology device(s).

511 IAC 7-29-5 by failing to convene the student's case conference committee (CCC) to review and, if necessary, modify the functional behavioral assessment (FBA) or the behavioral intervention plan (BIP) or both.

\*During the course of the investigation, the Complainant clarified that an independent educational evaluation, rather than an additional evaluation by the School, was sought. Therefore, the second and third issues of this Complaint have been consolidated into a single issue.

**FINDINGS OF FACT:**

1. The Student is 14 years old and is eligible for special education and related services due to an emotional disability.
2. A behavior intervention plan (BIP) based upon a functional behavioral assessment (FBA) has been a part of the Student's individualized education program (IEP) since November 5, 2003. On May 5, 2004, the case conference committee (CCC) revisited the FBA and revised the BIP, following an incident on April 23, 2004, when the Student engaged in unacceptable behavior when informed that the coke privilege had not been earned. The Student's behavior on April 23, 2004, resulted in suspension.
3. As revised, the BIP addressed the Student's refusal to follow adult direction by the following 4 interventions:
  - Walk off the anger – give space
  - Call ... case manager pager #...-....

- Call Mr. .... [the School's behavior specialist] – [phone number]
- Earn coke – “3 strikes” plan
  1. Do work
  2. Following direction/compliant

Not get coke unless earned/ not in possession until leaving. If this is a problem  
 “coke” plan will be eliminated – communicate w/ parent & case manager

4. The “3 strikes” plan referred to the Student's loss of the privilege of purchasing a coke at the end of the school day if the Student had failed to do assigned work or failed to follow directions 3 times during the school day. The BIP did not specify additional interventions or strategies to be utilized when the Student's refusal to follow adult direction occurred after the Student had already received “3 strikes” and in connection with attempts to purchase a coke, notwithstanding the “3 strikes” plan.
5. On May 11, 2004, the Student did not earn the privilege of purchasing a coke at the end of the school day, as the Student received 3 strikes for failing to follow directions and failing to complete assigned work. Following the 3<sup>rd</sup> strike, the School gave the Student the opportunity to walk off anger and given space when the Student walked to the Assistant Principal's office, with the special education teacher following at a distance. The Student was given space (“time out”) when seated at a study carrel outside the Assistant Principal's office, at a distance from other students and adults. Upon leaving the Assistant Principal's office, the Student returned to the area where the coke machine is located and made known his/her intent to purchase a coke. Teachers prevented the Student from purchasing a coke. The situation escalated. Upon the Student's return to the Assistant Principal's office, the Student was given space (“time out”). The intervention calmed the Student, but only temporarily. The School did not contact the case manager because the case manager was on vacation.
6. During the 2002-2003 school year, the Parent requested an educational evaluation (i.e., an early re-evaluation) to determine whether the Student's should be identified as having an autism spectrum disorder. The School conducted an educational evaluation during May and June, 2003. The School's educational evaluation included the Asperger Syndrome Diagnostic Scale and the Gilliam Autism Rating Scale, among other instruments and procedures. On August 22, 2003, the Student's CCC convened to discuss the evaluation. The Student's identification was not changed. The Discussion Summary of the August 22<sup>nd</sup> CCC Report. refers to the family's call to a private psychologist specializing in autism, indicates that the Parent was “confused” by the conflicts between the School's evaluation and a private therapist's diagnosis of Asperger's Syndrome, and records the Parent's disagreement with the identification.
7. The Parent alleges that an oral request for an IEE was made during one or more CCC meetings during the 2003-2004 school year, prior to the filing of the Complaint.
8. In addition to the August 22<sup>nd</sup> meeting, the CCC convened on November 4, 2003; December 8, 2003; January 8, 2004; and May 5, 2004. The CCC Reports for those 5 meetings do not contain a reference to a parental request for evaluation including IEE.
9. In order to achieve compliance with the 10-day timeline under 511 IAC 7-25-5(c), it is the School's practice to document the date of each request for an IEE at public expense by asking parents to put their requests in writing to the local director of special education (Director). The Parent denies being told to put the request in writing. It is undisputed that the Parent did not submit a written request for an IEE.

10. It is undisputed that, as of the date this Complaint was filed, the School had not provided a written response to the Parent's request for an IEE. It is also undisputed that neither the School nor the Parent initiated a due process hearing.
11. On May 25, 2004, during a CCC meeting, the Parent asked for further evaluation, and the Director offered an IEE at public expense. In a letter dated June 1, 2004, the Director confirmed to the independent evaluator (and the Parent) that the IEE will be at public expense.
12. The IEP that was in effect at the beginning of the 2003-2004 school year was reviewed and revised on August 22, 2003, and again on November 4, 2003. The IEP that was in effect for the remainder of the 2003-2004 school year was developed on December 8, 2003, and revised in part more than once. The Accommodations Checklist remained the same throughout the school year, including "access to word processing writer programs or equipment for lengthy assignments."
13. During the 2002-2003 school year, the Student began using an Alpha-Smart, on occasion. During the 2003-2004 school year, desk-top computers loaded with word processing software were available in the Student's classroom(s) and the school library. In addition, an Alpha-Smart continued to be available until March 1, 2004. The Alpha-Smart was removed and returned to the central assistive technology lab because the Student had discontinued using it. The Student continued to have access to desk-top computers.
14. On May 11, 2004, the Student was suspended. As of May 12, 2004, the Student's physician placed the Student on medical sick leave, and the suspensions were rescinded. The School proposed a CCC meeting to be held May 18, 2004. That date was not agreeable to the Parent. On May 18 or 19, 2004, the School contacted the Parent to arrange a date for the CCC meeting. On May 25, 2004, the CCC reconvened to conduct a manifestation determination, to review an FBA addressing the behavior(s) exhibited on May 11, 2004, and to revise the BIP.

## **CONCLUSIONS:**

1. Findings of Fact #2, #3, #4, and #5 indicate that the School utilized interventions required by the Student's Behavior Intervention Plan. Therefore, no violation of 511 IAC 7-27-7(a) occurred in connection with incident(s) that occurred on May 11, 2004.
- 2/3. Finding of Fact #6 indicates that an educational evaluation by school personnel was conducted, when requested by the Parent. Although Findings of Fact #7, #8, and #9 indicate that there is no written record of a parental request for an independent educational evaluation (IEE), Article 7 does not require this kind of request to be in writing. As the burden is on the School to document compliance, Finding of Fact #7 indicates that a parental request for an IEE was made, and Finding of Fact #10 indicates that the School did not respond within 10 business days. Therefore, a violation of 511 IAC 7-25-5(c) occurred. However, Finding of Fact #11 indicates that appropriate corrective action has been taken.
4. Findings of Fact #12 indicates that the Student's IEP did not specify a particular assistive technology device, and Finding of Fact #13 indicates that the Student had access to word processing writer programs or equipment for lengthy assignments, despite the removal of one device. Therefore, no violation of 511 IAC 7-27-7(a) occurred in connection with assistive technology device(s).
5. Findings of Fact #2 and #14 indicate that the Student's CCC reconvened within 10 business days after the suspensions (including the rescinded suspensions), to review the Student's existing BIP and its implementation and to modify the BIP and its implementation as necessary to address the behavior. Therefore, no violation of 511 IAC 7-29-5 occurred.

**The Department of Education, Division of Exceptional Learners requires no additional corrective action based on the Findings of Fact and Conclusions listed above.**